No. 24-1093

In the Supreme Court of the United States

ASHLEE MARIE MUMFORD,
PETITIONER,
v.
STATE OF IOWA,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE IOWA SUPREME COURT

PETITIONER'S REPLY BRIEF

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Respondent insists that this case presents a "fact[ual] dispute," rather than a legal one. BIO at 4; *accord id.* at 1, 18. Not so.

There's no dispute that "drug-detection dogs are highly trained tools of law enforcement." *Florida v. Jardines*, 569 U.S. 1, 12 (2013) (Kagan, J., concurring). Nor is there a dispute that the dog here was just such a tool, having honed—after a year of training and experience—a sense of smell "well above and beyond" that of its human handler. App. 60a. Respondent, moreover, acknowledges that this handler, Officer Dekker, "always [had] control of" the dog, and could "direct the dog [on] what to do and what not to do." App. 59a–60a. Officer Dekker himself testified that he commanded the dog to undertake a "scan search," which is a general instruction to search everywhere. App. 55a. It is, finally, undisputed that the dog's sniff around the "exterior" of Mumford's vehicle turned up nothing. App. 19a–20a. As the Iowa Supreme Court acknowledged, only afterward, when the dog "stood on its hind legs," "placed its front paws on the passenger door," and "entered the cabin of the vehicle" by sticking its "snout" across the "plane of the passenger window" did it "alert[] to the presence of controlled substances." App. 20a.

No one disputes any of these facts. All, then, agree that the physical intrusion of the law enforcement tool into Mumford's property provided the sole basis for her subsequent arrest and conviction.

Had such circumstances arisen in Idaho rather than Iowa, "the outcome" would have been different—a point Respondent concedes. BIO at 8. Had Mumford been

stopped in the Ninth Circuit, the intrusion would have also been an unconstitutional search. And had her case been heard in the Fifth Circuit, that court too would have analyzed her claim under a trespass analysis.

The Iowa Supreme Court, on the other hand, applied a reasonable-expectation-of-privacy analysis to Petitioner's claim, and held that these circumstances did not give rise to a Fourth Amendment violation. App. 20a–22a. And Respondent agrees that the Third, Sixth, Seventh, Eighth, and Tenth Circuits would have applied the same test and reached the same conclusion. BIO at 14.

This result—different courts reaching different results by applying different tests to the same facts—presents a quintessential legal question, not a factual one. And it is a question ripe for this Court's consideration. The Court should grant review and reverse.

I. RESPONDENT ACKNOWLEDGES THAT COURTS ARE SPLIT ON WHETHER A DOG'S SNIFF IN THE INTERIOR OF A CAR IS A SEARCH.

In the decision below, the Iowa Supreme Court recognized that "[o]ther courts have addressed the" question presented and "have come to different conclusions." App. 21a. Respondent too admits there's a "divergence" among courts. BIO at 18. But it tries to downplay this split in three ways.

1. First, it claims Idaho's rule is "largely premised on state-specific" "common law." *Id.* at 20 (citing *State v. Dorff*, 526 P.3d 988 (Id. 2023)).

That's wrong several times over. For one, the *reason* the Idaho Supreme Court looked to the common law was because it was "*only* concerned with the property-based test—not the 'reasonable expectation of privacy' test under *Katz*." *Dorff*, 526 P.3d at 993. And as this Court has explained, the "property-based approach" is "tied to common-law trespass," whereas *Katz*, in contrast, is not tied to the common law. *United States v. Jones*, 565 U.S. 400, 405 (2012). Nor did Idaho rely on the particularities of state law for its ultimate conclusion. Rather, as *Dorff* explains, "[f]rom Idaho's founding . . . and through to today, the common law of England—along with its traditional principles of property law—have been the general common law of Idaho." 526 P.3d at 995. Thus, in holding that "a 'search' occurs when a drug dog trespasses against the exterior of a vehicle," *Dorff* cited Blackstone and *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1965)—the same authorities relied on in *Jones* and *Jardines*. 526 P.3d at 991, 997; *Jones*, 565 U.S. at 405 (*Entick*); *Jardines*, 569 U.S. at 6–7 (Blackstone). Idaho, in other words, didn't break new, state-specific ground. It simply followed *Jones* and *Jardines*.

2. Next, Respondent sorts the remaining jurisdictions into "three buckets." BIO at 8. Where do these buckets come from? Respondent doesn't say. And this Court, certainly, has never before recognized one such bucket—"the instinctual-entry doctrine"—much less the broader Fourth Amendment trichotomy Respondent presents. *Id.* at 13. Instead, the Court has outlined two approaches for determining whether certain acts trigger the Fourth Amendment: a "property-rights baseline" and a "reasonable-expectations test." *Jardines*, 569 U.S. at 11. Those are the same frames that Petitioner has used. Pet. at 2–3. There is no need to set aside that well-founded

understanding for some unfounded triple-bucket framework.

In any event, Respondent's sorting does it no favors. Respondent, for instance, doesn't dispute that, in *United States v. Ngumezi* and *United States v. Richmond*, the Ninth and Fifth Circuits embraced a property-rights understanding to vehicle trespasses, thereby departing from courts applying a "reasonable-expectation-of-privacy" approach. 980 F.3d 1285, 1289 (9th Cir. 2020); 915 F.3d 352, 357–59 (5th Cir. 2019). Instead, Respondent deems *Ngumezi* and *Richmond* "irrelevant" because they "involve[d] cases where police officers"—rather than police dogs—"trespassed into the car." BIO at 8–9. According to Respondent, that means these cases must be grouped into a separate "officer trespass" bucket. *Id.*

But this Court has never suggested that, under a property-based approach, an officer must personally trespass onto a constitutionally protected area. To the contrary, in *Jones* and *Jardines*, the relevant trespass was by a "tool[] of law enforcement"—a GPS tracker in one and a dog in the other. 565 U.S. at 402; 569 U.S. at 12 (Kagan, J., concurring). So long as "'the Government obtain[ed] information'"—whether by officer or officer tool—"'by physically intruding' on persons, houses, papers, or effects," *Ngumezi*, 980 F.3d at 1289 (quoting *Jardines*, 569 U.S. at 5), "a search has undoubtedly occurred," *Jones*, 565 U.S. at 406–07 n.3.

The reasoning from *Ngumezi* and *Richmond* helps crystallize this point. If (a) *Jones* and *Jardines* establish a "bright-line rule" that "entering the interior space of a vehicle constitutes a Fourth Amendment search," and (b) if an officer "entering the interior space of a vehicle" gives rise to a search no matter the "magnitude" or "limited nature" of the intrusion, then (c) how can the unlawful

entry of a far *more* effective investigative tool, trained to "obtain[] information," result in *less* constitutional protection? *Ngumezi*, 980 F.3d at 1289 (quoting 569 U.S. at 5); *Richmond*, 915 F.3d at 358–59.

Respondent's effort to characterize *United States v. Keller*, 123 F.4th 264 (5th Cir. 2024), as a case that "cuts against Petitioner" is similarly unavailing. BIO at 9. *Keller* was not, as Respondent suggests, about whether the dog's intrusion was "automatically attributable to police conduct." *Id.* at 10. Those words are found nowhere in the Fifth Circuit's opinion. Instead, the key question in *Keller* was the same one in *Jones*: whether the trespass was "conjoined with an attempt to find something or obtain information." 123 F.4th at 268 (quoting 565 U.S. at 408 n.5). *Keller* involved no such attempt since it addressed—by Respondent's own admission—"a dog's incidental touching of a bumper." BIO at 9. But a dog that brushes against a car with its paws is worlds apart from one trained to use its nose to detect contraband and that actually uses that "nose [to] enter[] the vehicle" and "alert[] to the presence of controlled substances." App. 20a. Both are trespasses. The former is constitutional. The latter is not.

3. Respondent tries to group the remaining cases into two buckets: exterior alerts which provided pre-entry probable cause and intrusions where the dog acted out of instinct, rather than facilitation. Yet as Respondent acknowledges, "many courts considering an exterior alert" also "alternatively permit[] the search" under the "instinctual-entry doctrine." BIO at 13. That overlap is no accident: The common thread among the courts in these cases is that they apply an expectations-of-privacy, rather than property-based, approach to dog sniffs. The

"buckets" Respondent identifies are merely downstream issues from that threshold question.

Case law from the Tenth Circuit is illustrative. In *United States v. Stone*, 866 F.2d 359, 364 (10th Cir. 1989), the court recognized that the dog did not alert to contraband until it "was in the trunk" of the car. It nevertheless rejected a Fourth Amendment challenge, disagreeing with the assertion that the defendant had a "reasonable expectation of privacy" from "the dog's instinctive actions." *Id.* at 363–64. The court doubled down on that understanding post-*Jones* and -*Jardines*, emphasizing that, regardless of whether the police had probable cause, the property-based understanding was inapplicable to interior dog sniffs. *See Felders ex rel. Smedley v. Malcom*, 755 F.3d 870, 880 (10th Cir. 2014).

The remaining courts of appeals, the Third, Sixth, Seventh, and Eighth Circuits, are of a piece. All rejected Fourth Amendment challenges to interior dog sniffs, and all cited and drew on the Tenth Circuit's reasoning in *Stone* to do so. *See United States v. Pierce*, 622 F.3d 209, 213–14 (3d Cir. 2010); *United States v. Sharp*, 689 F.3d 616, 619–20 (6th Cir. 2012); *United States v. Guidry*, 817 F.3d 997, 1006 (7th Cir. 2016); *United States v. Kelvin Lyons*, 486 F.3d 367, 373 (8th Cir. 2007). And just like the Tenth Circuit, when these circuits were presented, post-*Jones* and -*Jardines*, with arguments sounding in trespass, they rejected them—and made clear that their analysis would have been the same regardless of whether the officer had probable cause pre-entry. *See United States v. Winters*, 782 F.3d 289, 292 (6th Cir. 2015) ("*Jardines* . . . does not alter the analysis for traffic stops."); *Guidry*, 817 F.3d at 1005–06 (rejecting argument that police "violated [defendant's] Fourth Amendment rights by allowing the dog to search the interior of [a]

car"); *United States v. Munoz*, 134 F.4th 539, 543 (8th Cir. 2025) (contact was not "an unlawful trespass" or "unreasonable search").

At bottom, these circuits follow the same rubric. They start with a reasonable-expectation-of-privacy analysis. *Stone*, 866 F.2d at 364. Next, they observe that individuals have an expectation of privacy when a "dog's entry into the car" is "facilitate[d]," but not when "a trained canine" acts out of instinct. *Guidry*, 817 F.3d at 1006; *Kelvin Lyons*, 486 F.3d at 373. And so, when the officer claims the dog's acts are instinctual, there's no Fourth Amendment issue. *Pierce*, 622 F.3d at 214–15; *Sharp*, 689 F.3d at 620.

On the other hand, jurisdictions from the other side of the ledger—Idaho, the Ninth Circuit, and the Fifth Circuit—begin with a different threshold question: whether the government "physically intrud[ed] on a constitutionally protected area." *Jones*, 565 U.S. at 406–07 n.3. If officers, as here, "obtain[ed] information" through intrusion, then a "search has undoubtedly occurred." *Id.* Had Petitioner proceeded in these courts, she could have pursued a Fourth Amendment claim. In five other circuits and before the Iowa Supreme Court, she had no such recourse.

II. THE DECISION BELOW IS INCORRECT.

The Iowa Supreme Court's decision cannot be squared with *Jones* and *Jardines*. This case involves the same "constitutionally protected area" as *Jones*. *Id.* at 407. It concerns the same law enforcement "tool[]" from *Jardines*. 569 U.S. at 11. And as in both those cases, the police here "obtain[ed] information" when their tool

physically intruded upon a constitutionally protected area. 565 U.S. at 407; 569 U.S. at 5.

Respondent hardly challenges this narrative. Instead, it falls back to the "instinctual-entry doctrine," reciting language from lower-court cases on the other side of the split. BIO at 21–25. But there are compelling reasons why this Court has not before and should not now embrace that "doctrine."

First, according to Respondent, the "brief," "momentary" nature of the "intrusion" plays a critical role in determining whether a sniff was instinctual and, hence, whether there's a Fourth Amendment problem. *Id.* at 24–25; *id.* at 30. But that makes little sense. A dog's nose can identify substances "too well hidden or present in quantities too small" for officers to locate, *Florida v. Harris*, 568 U.S. 237, 245 (2013), and it can do so in seconds, App. 19a. Thus, as Justice Kagan explained in *Jardines*, "in every way that matters," there's no difference between officers using a drug-sniffing dog and using a pair of "super-high-powered binoculars." 569 U.S. at 12 (Kagan, J., concurring). So too here. If, instead of a drug dog, the police developed an electronic tool that could quickly and accurately detect the smell of contraband, there cannot possibly be a legal distinction between officers shoving that tool into someone's car for three seconds or three minutes.

On top of this unwarranted emphasis on the length of the intrusion, an "instinct versus facilitation" inquiry requires judges to interrogate officer intent—and to do so through the lens of a dog's intent. But as this Court has explained, there's no need for courts to undertake such psychoanalysis. "One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy."

Jardines, 569 U.S. at 11. "That the officers learned what they learned only by physically intruding on [an individual's] property to gather evidence is enough to establish that a search occurred." *Id.* That's what happened here, and it answers the question presented without needing to ascertain a canine's motivations.

Finally, Respondent's attempt to argue that trespass of chattels is different from trespass by dogs lacks merit. BIO at 27–28. The cases make no such distinction, with authorities emphasizing "that the act of the dog was the voluntary trespass of the master." *Lyke v. Van Leuven*, 4 Denio 127, 128 (N.Y. Sup. Ct. 1847); *accord Hill v. Walker and Another*, 170 Eng. Rep. 256, 256 (K.B. 1806) (owner "guilty of a trespass" for "sending his dog into the cover, while he stood in the high road."). In any event, *Jardines* makes clear that, under a property-based approach, officers are not afforded some double benefit where they can use the information police dogs obtain but aren't liable for how these dogs obtain said information. Just like *Jardines*, the dog here was specially trained to sniff for controlled substances. App. 53a–54a. Indeed, the dog in this case was trained to stick its snout through holes to do so. App. 59a (dog must "indicate[] to th[e] odor that is inside of [a] hole."). And that's exactly what it did, by inserting its nose inside Petitioner's car to obtain the information necessary for Petitioner's arrest. The Fourth Amendment guards against such trespasses.

III. THIS CASE IS A STRONG VEHICLE.

Respondent offers two vehicle-related arguments. Both lack merit.

Respondent contends first that the "underlying dispute" is over whether the dog's entry was "'facilitated' or 'instinctual,'" but "Petitioner failed to preserve any [such] challenge." BIO at 29–30. That's both wrong and irrelevant. It's wrong because this Court may "review . . . an issue not pressed so long as it has been passed upon." *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995). The decision below checks that box. *See* App. 20a (discussing whether "behavior was instinctual"). More importantly, Respondent's contentions are irrelevant because the threshold question is whether courts should apply a privacy or property-rights approach. Petitioner clearly raised this point, and instinct or facilitation is a consideration downstream from that question.

Respondent's second vehicle argument, on the exclusionary rule, fares no better. As the petition noted, the lower court's exclusionary rule determination should not preclude review (1) because its reasoning was intertwined with its reasonable-expectation-of-privacy analysis, and (2) because it, in any event, misapplied this Court's exclusionary-rule precedents. Pet. at 26–28. The brief in opposition does not challenge the former point. On the latter, Respondent says only that "any Fourth Amendment mistake was, at worst, reasonable" because "[n]o binding precedent warned" officers that the physical intrusion here was unconstitutional. BIO at 32. That, Respondent argues, means exclusion is inappropriate under *Davis v. United States*, 564 U.S. 229 (2011). *Id.*

Respondent overreads *Davis*. *Davis* declined to exclude evidence because, "[a]t the time of the search," "the Eleventh Circuit had" established a "bright-line rule," which bound the officers there. 564 U.S. at 239. The officers here were not so situated. To the contrary,

several months before the Iowa Supreme Court decided this case, it ruled that a dog that "ma[kes] contact with the exterior of a vehicle" does not raise Fourth Amendment concerns. *State v. Bauler*, 8 N.W.3d 892, 894 (Ia. 2024). But in reaching that conclusion, *Bauler* expressly declined to decide whether the result would have been different if there was an "entry into the private space inside the vehicle." *Id.* at 895; *accord id.* at 907 n.8. In other words, the officers here weren't following binding precedent. They were acting in an area where the law was explicitly unsettled.

To reach the result Respondent wants, the Court would have to set aside the intertwined nature of the Iowa Supreme Court's exclusionary rule and reasonable-expectation-of-privacy analysis *and* expand *Davis* beyond its confines. It need not do either.

* * *

Peppered throughout Respondent's brief is an insistence that here the dog was "just being a dog." BIO at 17; *id.* at 23. If that's true, then so too was the dog "just being a dog" in *Jardines*. 569 U.S. at 4. And the GPS tracker was "just being" a GPS tracker in *Jones*. 565 U.S. at 402. In those cases and this one, it doesn't matter if a police tool was "just being" one thing or another. What matters is whether "the Government obtain[ed] information by physically intruding on a constitutionally protected area." *Id.* at 406–07 n.3. That happened in *Jones*. It happened in *Jardines*. And it happened here.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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